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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,299	03/12/2004	James F. McGuckin JR.	1231	8233

7590
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REX MEDICAL
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09/19/2008

EXAMINER

EREZO, DARWIN P

ART UNIT	PAPER NUMBER
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3773

MAIL DATE	DELIVERY MODE
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09/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/800,299	Applicant(s) MCGUCKIN ET AL.	
	Examiner Darwin P. Erez	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12,13,20 and 22 is/are allowed.
- 6) ☒ Claim(s) 15 and 16 is/are rejected.
- 7) ☒ Claim(s) 1,2,4,6-11,19 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is in response to applicant's amendment filed on 6/5/08.

Claim Objections

2. Claims 1, 2, 6-9 and 19 are objected to because of the following informalities:

In claim 1, line 9, the limitation "within the openings" should read as --within the openings in the sidewall--.

In claim 2, line 1, the limitation of "wherein the flexible member" should read as --wherein the portion of the flexible member--.

In claim 6, lines 1-2, the limitation of "the two loops" should read as --the first and second loop openings--, in order to be consistent with the terminology of claim 1.

In claim 7, lines 1 and 2, the limitation of "the loops" should read as --the first and second loop openings--, in order to be consistent with the terminology of claim 1.

In claim 8, line 1, the limitation of "the loops" should read as --the first and second loop openings--, in order to be consistent with the terminology of claim 1

In claim 8, line 2, the limitation of "one loop" and "other loop" should read as --one loop opening-- and --other loop opening --, in order to be consistent with the terminology of claim 1.

In claim 9, line 1, the limitation of "the first and second loop" should read as --the first and second loop openings --, in order to be consistent with the terminology of claim 1.

Art Unit: 3773

In claim 19, line 1, the limitation of “the loops” should read as --the first and second loop openings--, in order to be consistent with the terminology of claim 1.

In claim 19, line 2, the limitation of “one loop” and “other loop” should read as --one loop opening-- and --other loop opening --, in order to be consistent with the terminology of claim 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

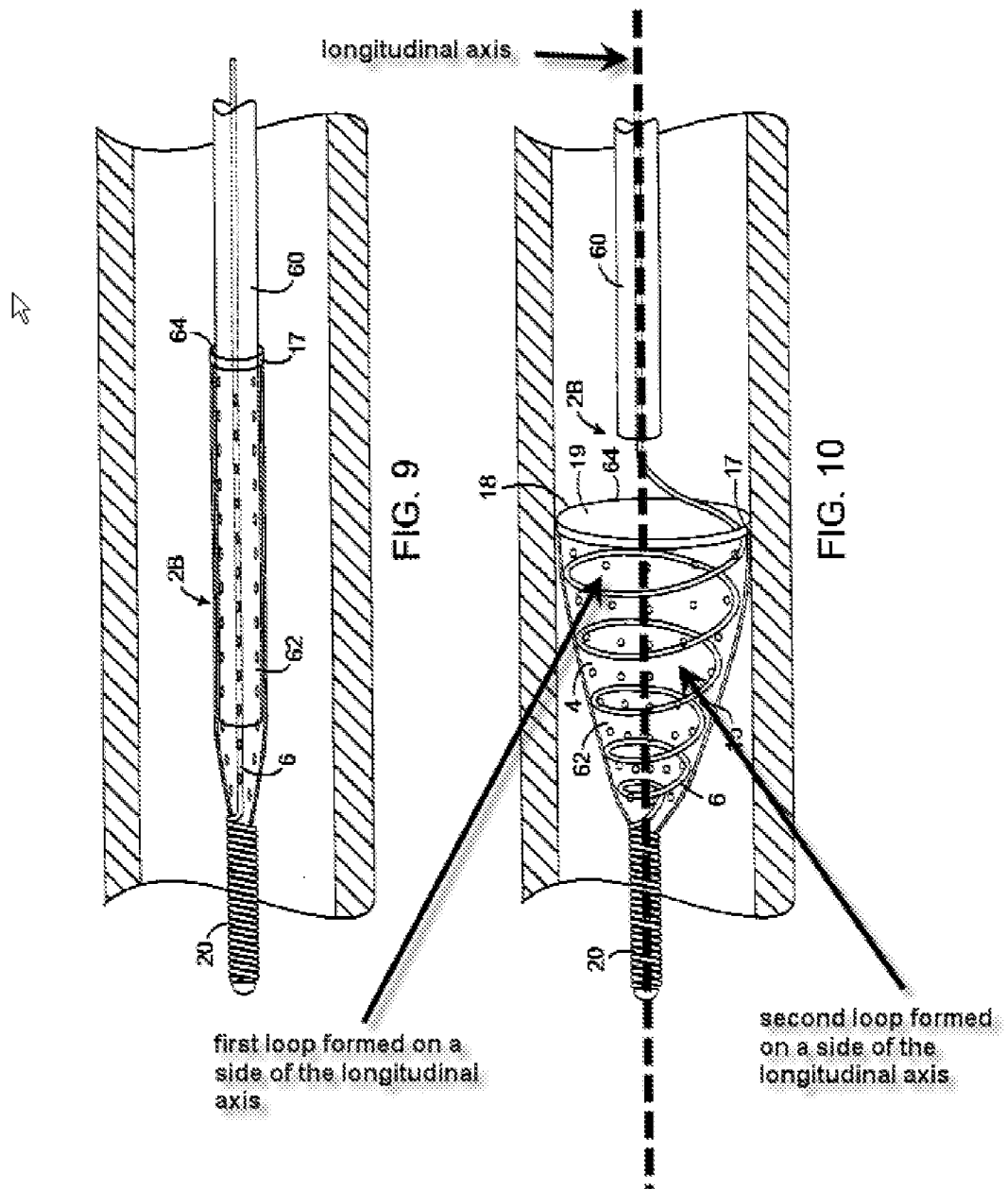
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 15 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,425,909 to Dieck et al.

As seen in Fig. 9 and 10, Dieck discloses a distal protection device comprising a catheter **60**, a flexible member **6** positioned and movable from a first position (Fig. 9) to a second looped position (Fig. 10) extending laterally with respect to the catheter, such that in the second looped position a loop opening is formed lying in a plane that is non-aligned with a longitudinal axis of the catheter (Fig. 1), the flexible member being movable between the first and second

Art Unit: 3773

positions by user control by movement of the flexible member **6**, and self-retracting filter material **4** movable from a an original collapsed position (Fig. 9) to an expanded position (Fig. 10) in response to movement of the flexible member, wherein the filter material automatically moves from the expanded position back to the original collapsed position upon movement of the flexible member back to the first position, in the first position, at least a portion of the flexible member is retracted within the catheter and unexposed, and in the expanded position the filtering material allowing blood therethrough while being capable of capturing material dislodged by a treatment device; wherein the catheter has an opening in a sidewall (the distal end wall) through which the flexible member extends when moved to the second looped position; wherein in the second looped position, a separate loop opening is formed on each side of the longitudinal axis (see attached figure below).



Allowable Subject Matter

5. Claims 13, 13, 20 and 22 are allowed.
6. Claims 1, 2, 4, 6-11, 19 and 21 are objected to but would be allowable if rewritten to overcome the claim objections above.

Response to Arguments

7. Applicant's arguments filed 6/5/08 have been fully considered but they are not persuasive. The applicant amended claim 15 to recite that the flexible members form separate loop opening on each side of the longitudinal axis. However, as shown in the attached figure above, Dieck discloses loop members that can be viewed as being separated by the longitudinal axis.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez whose telephone number is (571)272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax

Art Unit: 3773

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darwin P. Erezol/
Primary Examiner, Art Unit 3773